

RECORDING REQUEST BY:

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

WHEN RECORDED MAIL TO:

DEPARTMENT OF TOXIC
SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710
ATTN: BARBARA J. COOK, P.E.

Recorded in Official Records of Alameda Co.
Patrick O'Connell Clerk-Recorder



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SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT

TO RESTRICT USE OF PROPERTY

Eastern Portion Former Bobo's Junkyard Site

1401 Third Street

Oakland, California

This Covenant and Agreement ("Covenant") is made on the
22 day of September, 1997 by Southern Pacific
Transportation Company ("Covenantor"), who is the owner of
record of certain property situated in Oakland, County of
Alameda, State of California, and by the Department of Toxic
Substances Control (the "Department"). The property which
is the subject of this Covenant is the shaded portion of the
parcel described in the Legal Description in Exhibit "A" and
as shown on the Site Plan in Exhibit "B" (the "Property").
Exhibit "A" and Exhibit "B" are attached hereto and
incorporated herein by this reference. Covenantor and the
Department desire and intend that in order to protect the
present and future public health and safety, the Property
shall be used in such a manner as to avoid potential harm to
persons or property which may result from hazardous

substances which have been deposited on the Property.

ARTICLE I

STATEMENT OF FACTS

1.01 Description of contamination. The Property is approximately 2 acres and is located on the south side of Third Street, between Chester Street and Mandela Parkway (formerly Cypress Street), in the City of Oakland, Alameda County. The Property was formerly occupied by residential homes, a wood and coal yard, fertilizer factory and warehouse, and automobile dismantling operations. Contaminants detected in the soil include high-, middle-, and low-boiling petroleum hydrocarbons (e.g. motor oil, oil and grease, gasoline, diesel fuel), aromatic hydrocarbons (e.g. benzene, toluene, ethylbenzene, xylenes), aliphatic volatile organic compounds (e.g. vinyl chloride, trichloroethylene, cis-1,2-dichloroethene), polynuclear aromatic hydrocarbons (PNAs; e.g. benzo(a)pyrene, dibenz(a,h)anthracene, indo(1,2,3-dc)pyrene), metals (e.g. arsenic, lead), and pesticides (e.g. DDD, DDE, DDT, dieldrin) in the vadose-zone soil. Shallow groundwater contains elevated levels of low-boiling petroleum hydrocarbons, aliphatic volatile organic compounds, and aromatic volatile organic compounds.

Ten footings and associated columns, and one abutment are located within the boundary of the Property, which are part

1 of the Cypress Freeway under construction by the California
2 Department of Transportation [Caltrans]. As a requirement of
3 the Department-approved Removal Action Workplan, the
4 property is to be covered with an asphalt, or equivalent
5 type of material, (herein after referred to as the "Cap") to
6 contain the contaminants and prevent the contaminants from
7 migrating.

8
9 1.02 Health Effects. The potential routes of exposure
10 to these contaminants are through incidental ingestion of
11 surface and subsurface soil, dermal contact with soil,
12 inhalation of dust and volatile chemicals from surface soil,
13 and inhalation of volatile chemicals from groundwater. The
14 Cap will eliminate generation of dusts and particulates from
15 on-site soil. The cap will also prevent surface water from
16 infiltrating into soils containing the contaminants. The
17 potential human health effects resulting from exposure to
18 these contaminants are as described in the U.S. Department
19 of Health & Human Services, Public Health Service, Agency
20 for Toxic Substances and Disease Registry, individual
21 Toxicological Profiles, and the Remedial Investigation and
22 Baseline Risk Assessment Report, Former Bobo's Junkyard
23 Operable Unit, 1401 Third Street, Oakland, California, as
24 approved by the Department of Toxic Substances Control on or
25 about September 28, 1995 in connection with the Property.

26 1.03 Surrounding Land Use. The Property is located in
27 an area of mixed residential and industrial land uses. The
Southern Pacific Transportation Company (SPTCo) West Oakland

1 and Desert rail yards lie to the south of the Property, an
2 adjacent SPTCo property (330 Mandela Parkway) lies to east,
3 residences lie to the west, and residential and industrial
4 properties lie to the north across Third Street. There are
5 four schools, five day care centers, and one health center
6 within a one-half mile radius of the Property.

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9 ARTICLE II

10 GENERAL PROVISIONS

11
12 2.01 Provisions to Run with the Land. This Covenant
13 sets forth protective provisions, covenants, restrictions,
14 and conditions (collectively referred to as "Restrictions"),
15 upon and subject to which the Property and every portion
16 thereof shall be improved, held, used, occupied, leased,
17 sold, hypothecated, encumbered, and/or conveyed. Each and
18 all of the Restrictions shall run with the land, and pass
19 with each and every portion of the Property, and shall apply
20 to, and bind the respective successors in interest of
21 thereof. Each and all of the Restrictions are imposed upon
22 the Property (as described in Exhibit "A" and shown in
23 Exhibit "B"), unless expressly stated as applicable to a
24 specific portion of the Property. Each and all of the
25 Restrictions are imposed pursuant to Health and Safety Code
26 Sections 25355.5 and 25356.1 and run with the land pursuant
27 to Health and Safety Code Section 25355.5. Each and all of
the Restrictions are enforceable by the Department.

1 2.02 Concurrence of Owners Presumed. All purchasers,
2 lessees, or possessors of any portion of the Property shall
3 be deemed by their purchase, leasing, or possession of such
4 Property, to be in accord with the foregoing and to agree
5 for and among themselves, their heirs, successors,
6 assignees, agents, employees, and lessees of such owners,
7 heirs, successors, and assignees, that the Restrictions as
8 herein established must be adhered to for the benefit of
9 future Owners and Occupants and that their interest in the
10 Property shall be subject to the Restrictions contained
11 herein.

12 2.03 Incorporation into Deeds and Leases. Covenantor
13 desires and covenants that the Restrictions set out herein
14 shall be incorporated by reference in each and all deeds and
15 leases of any portion of the Property.

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18 ARTICLE III

19 DEFINITIONS

20
21 3.01 Department. "Department" shall mean the
22 California Department of Toxic Substances Control and shall
23 include its successor agencies, if any.

24
25 3.02 Improvements. "Improvements" shall mean all
26 buildings, roads, driveways, regrading, and paved parking
27 areas, constructed or placed upon any portion of the

1 Property.
2

3 3.03 Occupant(s). "Occupant(s)" shall mean those
4 persons entitled by ownership, leasehold, or other legal
5 relationship to the exclusive right to occupy any portion of
6 the Property.
7

8 3.04 Owner(s). "Owner(s)" shall mean the Covenantor
9 or its successors in interest, including heirs and assigns,
10 who hold title to all or any portion of the Property.
11

12 ARTICLE IV
13

14 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY
15

16 4.01 Restrictions on Development and Use. Covenantor
17 promises to restrict the use of the Property as described in
18 said Exhibit A as follows:
19

- 20 a. Property shall be restricted to commercial or
21 industrial uses.
22 b. Residential development for human habitation shall not
23 be permitted on the Property.
24 c. Hospitals or health clinics shall not be permitted on
25 the Property.
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2 d. Day-care centers for either children or senior citizens
3 shall not be permitted on the Property.
4
5 e. Schools for children under 21 years of age shall not be
6 permitted on the Property.
7
8 f. No drilling for drinking water shall be permitted on
9 the Property.
10
11 g. No raising of food (e.g., livestock, food crops, etc.)
12 shall be permitted on the Property.
13
14 h. Subdivision of the Property is forbidden, except as
15 allowed under Health and Safety Code Section 25232
16 (a)(2) and (b)(2).
17
18 i. No activities which will disturb the soil (e.g.,
19 excavation, grading, removal, trenching, filling, earth
20 movement, or mining) shall be permitted on the Property
21 without the Department's prior written approval of a
22 Soil Management Plan.
23
24 j. Any contaminated soils brought to the surface by
25 grading, excavating, trenching or backfilling shall be
26 managed in accordance with all applicable provisions of
27 the state and federal law.
k. Any proposed alteration of the Cap shall require
written approval by the Department.

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2 1. The Property shall be used in such a way as to preserve
3 the integrity of the cap and monitoring wells.

4 m. The Owner(s)/Occupant(s) shall not conduct any
5 activities on the Property which may cause a potential
6 threat to public health and the environment resulting
7 from the release of hazardous substances contained
8 under the Cap on the Property.

9
10 n. Prior to sale, lease, or rental, the Owner(s) shall
11 give written notice to purchasers, lessee, and tenants
12 stating that there is residual contamination specified
13 in Health and Safety Code Section 25359.7(a).

14 4.02 Conveyance of Property. The Owner(s) shall
15 provide a thirty (30) days advance notice to the Department
16 of any sale, lease or other conveyance of the Property or an
17 interest in the Property to a third person. The Department
18 shall not, by reason of the Covenant, have authority to
19 approve, disapprove, or otherwise affect any sale, lease, or
20 other conveyance of the Property except as otherwise
21 provided by law, by administrative order, or by reason of
22 this Covenant.

23 4.03 Enforcement. Failure of the Owner(s) or
24 occupants to comply with any of the requirements, as set
25 forth in Section 4.01, shall be grounds for the Department,
26 by reason of the Covenant, to require that the Owner(s) or
27 occupants modify or remove any improvements constructed in

1 violation of Section 4.01. Violation of the Covenant shall
2 be grounds for the Department to file civil and criminal
3 actions against the Owner(s) or occupants as provided by
4 law.

5
6 4.04 Notice in Agreements. All Owners and occupants
7 shall execute a written instrument which shall accompany all
8 purchase, lease, sublease, or rental agreements relating to
9 the Property. The instrument shall contain the following
10 statement:

11 "The land described herein contains hazardous
12 substances. Such condition renders the land and the
13 owner, lessee, or other possessor of the land subject
14 to requirements, restrictions, provisions, and
15 liabilities contained in the Covenant to Restrict Use
16 of Property recorded in the chain of title for this
17 Property pursuant to Chapter 6.5 and Chapter 6.8 of
18 Division 20 of the Health and Safety Code. This
19 statement is not a declaration that a hazard exists on
20 this Property."
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2 ARTICLE V

3 VARIANCE AND TERMINATION
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5 5.01 Variance. Any Owner(s) or, with the Owner(s)'
6 written consent, any Occupant of the Property or any portion
7 thereof may apply to the Department for a written variance
8 from the provisions of this Covenant. Such application
9 shall be made in accordance with Health & Safety Code
10 Section 25233.

11 5.02 Termination. Any Owner(s) or, with the Owner's
12 (s') written consent, any Occupant of the Property or a
13 portion thereof may apply to the Department for a
14 termination of the Restrictions as they apply to all or any
15 portion of the Property. Such application shall be made in
16 accordance with Health & Safety Code Section 25234.

17
18 5.03 Term. Unless modified or terminated in
19 accordance with Sections 5.01 or 5.02 above, by law or
20 otherwise, this Covenant shall continue in effect in
21 perpetuity.
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3 ARTICLE VI

4 MISCELLANEOUS
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6 6.01 No Dedication Intended. Nothing set forth herein
7 shall be construed to be a gift or dedication, or offer of a
8 gift or dedication, of the Property or any portion thereof
9 to the general public or for any purposes whatsoever.

10
11 6.02 Notices. Whenever any person gives or serves any
12 notice, demand, or other communication with respect to this
13 Covenant, each such notice, demand, or other communication
14 shall be in writing and shall be deemed effective 1) when
15 delivered, if personally delivered to the person being
16 served or to an officer of a corporate party being served or
17 official of a government agency being served, or 2) three
18 (3) business days after deposit in the mail if mailed by
19 United States mail, postage paid certified, return receipt
20 requested:

21 To: "Covenantor"
22 David Uhrich
23 Assistant Vice President
24 Contracts and Real Estate Department
25 Union Pacific Railroad
26 1416 Dodge Street, Room 1100
27 Omaha, Nebraska 68179

Copy to:

Department of Toxic Substances Control

700 Heinz Avenue, Suite 200

Berkeley, CA 94710

Attention: Barbara J. Cook, P.E., Chief

Site Mitigation Branch

6.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

6.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

6.05 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

6.06 References. All references to Code sections include successor provisions.

1 IN WITNESS WHEREOF, the parties execute this Covenant as of
2 the date set forth above.
3

4 OWNER

5 Southern Pacific Transportation Company
6

7 By: *[Signature]*

8 ~~M.W. Casay~~ *R.D. LHRICH*

9 ~~General Director, Special~~
10 *ASSISTANT VICE PRESIDENT*
11 ~~Properties, sales and Development~~

12 Date: *September 12, 1997*

13 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

14

15 By: *[Signature]*

16 Barbara J. Cook, Chief

17 Site Mitigation Branch

18 Berkeley Office

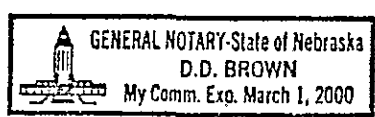
19 Date: *September 22, 1997*
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STATE OF NEBRASKA)
~~CALIFORNIA~~)
COUNTY OF Douglas)

On Sept 12, 1997 before me, a Notary Public in
and for State of ~~California~~ NEBRASKA, personally appeared
R.D. UHRICH, personally known to me or
proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and
acknowledged to me that he/she executed the same in his/her
authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which
the person acted, executed the instrument.

WITNESS my hand and official seal.

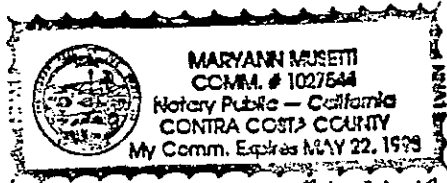


[Signature]
Notary's Signature

1 STATE OF CALIFORNIA)
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COUNTY OF ~~ALAMEDA~~
 Contra Costa

On September 22, 1997 before me, a Notary Public in
 and for State of California, personally appeared Barbara J.
 Cook, ~~personally known to me or~~ proved to me on the basis of
 satisfactory evidence to be the person whose name is
 subscribed to the within instrument and acknowledged to me
 that she executed the same in her authorized capacity, and
 that by her signature on the instrument, the Department of
 Toxic Substances Control executed the instrument.



MAY 22, 1998

WITNESS my hand and official seal.


 Notary's Signature

EXHIBIT A

Exhibit A
Legal Description

All that property situate in the City of Oakland, County of Alameda, State of California, more particularly described as follows:

Beginning at the northeasterly corner of Block 450, as Block 450 is shown and so designated on that map entitled "Map of Subdivision of Lot 450 of Boardman's Official Map of the City of Oakland", recorded August 13, 1869, in Map Book 3, Page 29, in the office of the county recorder of Alameda County, said point also being on the westerly line of Cypress Street; thence, from said Point of Beginning, along said westerly line, South $17^{\circ}06'32''$ West, 5.00 feet to a point of curvature (a radial through said point bears South $37^{\circ}00'53''$ East), said point being the beginning of a non-tangent curve, concave northwesterly, and having a radius of 434.34 feet; thence, leaving said westerly line, southwesterly, along said curve through a central angle of $26^{\circ}25'04''$ an arc distance of 200.26 feet; thence, South $05^{\circ}47'55''$ West, 35.69 feet; thence, North $72^{\circ}53'28''$ West, 230.00 feet; thence, North $17^{\circ}06'32''$ East, 39.30 feet; thence, North $72^{\circ}53'28''$ West, 182.80 feet; thence, South $89^{\circ}58'49''$ West to the beginning of a curve, concave northwesterly, and having a radius of 1800.00 feet; thence northeasterly, along said curve through a central angle of $9^{\circ}05'59''$ an arc distance of 285.58 feet, more or less, to the southerly line of said Block 450, said line also being the southerly line of 3rd street; thence along said southerly line, South $72^{\circ}53'28''$ East, 207.73 feet, to the Point of Beginning, containing 48,698 square feet, more or less.

End of Description

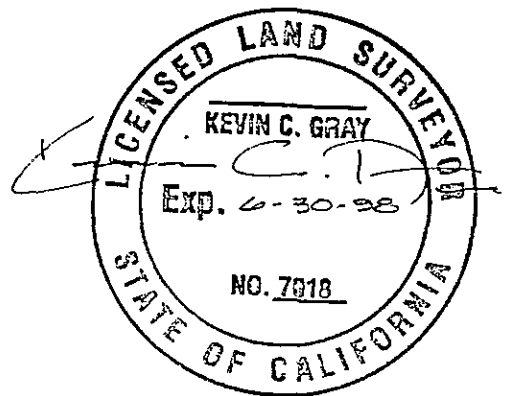
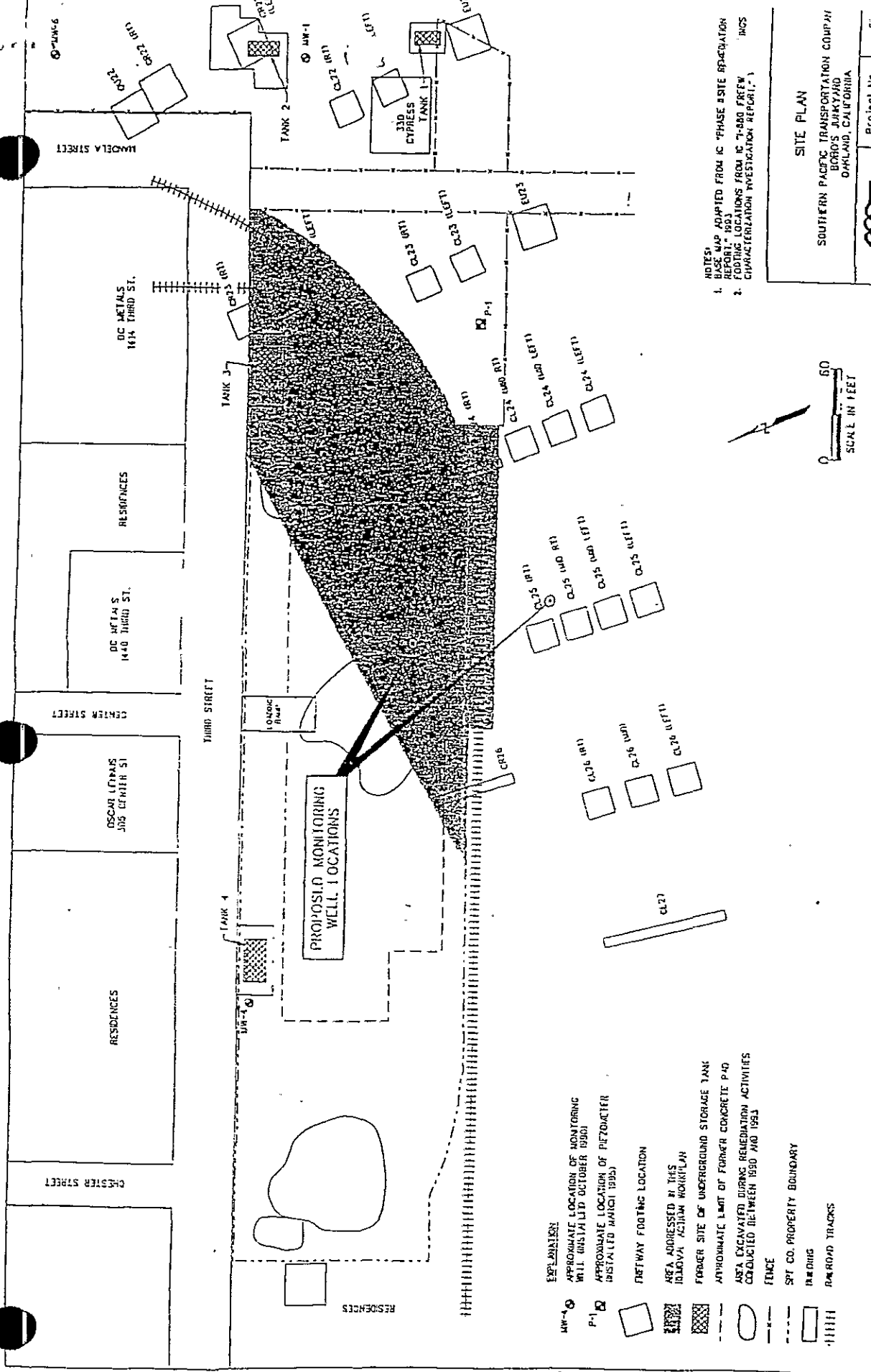


EXHIBIT B



Area to be deed restricted is shaded.

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